

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In the Matter of Adverse Actions
Against All Licenses Held By Grand
American Restaurant Company d/b/a
The Wild Onion

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Raymond R. Krause (ALJ) on August 11, 2008, at the Ramsey County Courthouse, 15 West Kellogg Boulevard, St. Paul, Minnesota. The hearing was held pursuant to an Amended Notice of Violation and Notice of Rescheduled Administrative Hearing dated July 14, 2008.

Rachel Tierney, Assistant City Attorney, appeared on behalf of the City of St. Paul (the City). David L. Hashmall and Richard R. Voelbel, Felhaber, Larson, Fenlon & Vogt, P.A., appeared on behalf of Grand American Restaurant Company d/b/a The Wild Onion (Respondent). Officer Michael Lee, Officer Laura Bolduan, Reece Anderson, Christine Rozek, Daniel Martin, Thomas Richardson and Joseph Schaefer also were present as witnesses. The testimony of Ryan Clark was introduced via videotaped deposition. The City's Exhibits 1-10 and Respondent's Exhibits 1-3 were accepted into evidence. The Office of Administrative Hearings record closed at the end of the hearing.

STATEMENT OF THE ISSUES

1. Did the City prove by a preponderance of the evidence that the Wild Onion served alcohol to an obviously intoxicated person on May 7, 2008?

The ALJ finds that the City did not.

2. Did the City prove by a preponderance of the evidence that, on June 11, 2008, the Wild Onion violated the conditions of its license by failing to ensure that patrons left the premises and its parking lot without causing a disturbance?

The ALJ finds that the City did meet its burden of proof.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Factual Background

1. Mr. Joseph Schaefer is the owner of Grand American Restaurant Company d/b/a The Wild Onion, which is at 788 Grand Avenue in the City of St. Paul. Mr. Schaefer has owned The Wild Onion since May of 1997.¹

2. The Wild Onion is licensed by the City of St. Paul to sell liquor until its 2 a.m. closing time.²

3. In July of 1999, the Wild Onion received a new liquor license which was required because of a change of officers of the corporation. Following a City Council hearing, the liquor license was granted with conditions imposed. Most of the conditions are standard with bars that include sidewalk cafes. The first condition is specific to the Wild Onion and states:

The management of the Wild Onion shall provide security in the parking lots Tuesday through Saturday at bar closing to ensure that the patrons leave the premises and the parking lots without causing a disturbance in the surrounding neighborhoods. Patrons shall be advised of the necessity of leaving in an orderly manner and shall not be permitted to loiter outside the bar or in the parking lots.³

4. Over the years, neighbors living near the Wild Onion have complained to the City of St. Paul. The majority of complaints have been about noisy disturbances around closing time.⁴

5. Alcohol awareness training is designed to teach people how to recognize intoxication, what over-service is, how to check peoples' identification and related skills. The City of St. Paul offers a discount on liquor license fees if a bar sends its employees to alcohol awareness training offered by a trainer approved by the city.⁵

6. The last time the Wild Onion got a credit for sending its employees to alcohol awareness training was in 2005.⁶

¹ Testimony of Joseph Schaefer (Schaefer test.); City's Exhibit (Ex.) 1-4.

² Ex. 1-3.

³ Testimony of Christine Rozek (Rozek test.); Ex. 1-2 and 2.

⁴ Rozek test.; Ex. 1-1 and 1-2.

⁵ Rozek test.

⁶ *Id.*

Serving an Obviously Intoxicated Person

7. On the night of May 6 – 7, 2008, Michael Lee, a patrol officer with the St. Paul police department, was on duty and assigned to watch the Wild Onion and make traffic stops as appropriate. Officer Lee was alone in his police car.⁷

8. Officer Lee's car was parked across Grand Avenue from the Wild Onion parking lot, facing west so that he had a clear view of the front door of the Wild Onion, its parking lot entrance and of most of the vehicles coming from the parking lot.⁸

9. As he watched the Wild Onion, Officer Lee observed three people come out the front door of the bar together. A male was in the center, with a female on each side of him. Officer Lee noticed that the man had his arms around the necks of his two companions, so as to be helped across the street. Officer Lee thought that the man might be injured or intoxicated.⁹

10. Officer Lee is not certain whether he approached the trio before or after they got into a car in the parking lot opposite the Wild Onion.¹⁰ Officer Lee spoke with the man whose name is Reece Anderson, and with Mr. Anderson's companions. Mr. Anderson's companions explained that they were his friends and that it was 21st birthday. Officer Lee asked Mr. Anderson whether he was all right and said that he noticed Mr. Anderson had had trouble crossing the street. Mr. Anderson replied that he had been drinking at three different bars, including the Wild Onion where he had shared two pitchers of beer with friends.¹¹

11. Observing that Mr. Anderson's speech was slurred, his eyes red and watery and that he smelled strongly of alcohol, Officer Lee asked Mr. Anderson whether he could administer a preliminary breath test (PBT). Mr. Anderson consented, and the PBT registered .197, over twice the legal limit for drinking and driving.¹²

12. After confirming that Mr. Anderson was a passenger in a car with a designated driver who had not been drinking, and warning Mr. Anderson's friends to watch him carefully because he was very intoxicated, Officer Lee permitted Mr. Anderson and his friends to leave.¹³

13. Officer Lee stated on his incident report that he was concerned "that the bar is serving people that are intoxicated and or to the point of intoxication" and referred the report for liquor license review.¹⁴

⁷ Testimony of Officer Michael Lee (Lee test.).

⁸ Lee test.

⁹ Lee test.

¹⁰ Lee test.

¹¹ Lee test., Ex. 3-1 through 3-3.

¹² Lee test., Ex. 3-1 through 3-3.

¹³ *Id.*

¹⁴ Ex. 3-3.

14. Officer Lee is a traffic enforcement officer and does not work with the vice unit of the police department. He is not involved specifically in code enforcement and is not aware of how that unit conducts its operations.¹⁵

15. Officer Lee conducted no follow-up with the Wild Onion after dismissing Mr. Anderson. He did not go into the Wild Onion to observe or make inquiries about whether the Wild Onion serves pitchers of beer, or to ask the staff in the Wild Onion about Mr. Anderson's condition at the time he was served; what or where he was served; or his apparent condition at the time he was served.¹⁶

16. Officer Lee does not recall performing any physical tests on Mr. Anderson such as a step, walk and turn test or a one-leg stand or finger-to-nose test. The only test he is certain he administered is the PBT test.¹⁷

17. Although he acknowledges that he was intoxicated at the time he left the bar, Mr. Anderson denies that he was having trouble walking. He put his arms around the two women who left the bar with him because they were close friends who had been with him all evening celebrating his 21st birthday.¹⁸

18. Mr. Anderson had gone to dinner with his parents, his brother and about 5 to 7 friends early in the evening on May 6, 2008 to celebrate his birthday. About 6-8 people shared two pitchers of beer at that dinner, and Mr. Anderson probably had about 1 ½ glasses of beer from those pitchers. After dinner, the group walked a few blocks back to Mr. Anderson's apartment where they ate cake and he opened birthday presents. They were at his apartment for about ½ hour to 45 minutes. Toward the end of that time, Mr. Anderson drank one beer. At about 10:00 p.m., Mr. Anderson and his friends took a cab to a bar in Minneapolis where he had one large mixed drink, which was probably the equivalent of about 1 ½ drinks. Then, Mr. Anderson and his friends took a cab to the Wild Onion, arriving there shortly after 11:00 p.m.¹⁹

19. While at the Wild Onion, Mr. Anderson had first ordered and drank a vodka cranberry sprite. He sat at a high top table near the dance floor and moved back and forth between the table and some friends celebrating another friend's birthday near the bar. Mr. Anderson ordered only the vodka cranberry sprite for himself. The other drinks he had that night at the Wild Onion were brought to him by friends in honor of his birthday.²⁰

20. Mr. Anderson had 3 or 4 more drinks while at the Wild Onion. At least two of his friends brought shots to him. His last shot was a drink called a "Scooby Snack" which was sweet and had pineapple juice in it. He does not like pineapple juice and only drank the shot because his friend brought it to him as a birthday gift. Immediately

¹⁵ Lee test.

¹⁶ Lee test.

¹⁷ Lee test.

¹⁸ Testimony of Reece Anderson (Anderson test.).

¹⁹ Anderson test.

²⁰ Anderson test.

after drinking the Scooby Snack, Mr. Anderson felt sick and told his friends he had to leave. They left the bar within five minutes of the time he drank the Scooby Snack. He knows that he was drunk but was not using his friends as crutches when he put his arms around them as they left the bar.²¹

21. Mr. Anderson and his two women friends got into the back seat of his friend, Luke's, car. Mr. Anderson was in the middle. He had to ask one of his friends to get out so he could get out of the car when Officer Lee approached the car and asked to speak to him. Mr. Anderson got out of the car under his own power. He did not need any assistance.²²

22. While he was in the Wild Onion, Mr. Anderson felt happy. He did not fall down or stumble at all. He interacted with three staff people in the bar: the security person at the front door when he entered and two additional bar staff – one who gave him a wrist bracelet signifying he was a birthday customer; a second who served him the vodka cranberry sprite. As far as he could tell, none of the Wild Onion staff seemed concerned about his demeanor.²³

23. Ryan Clark works at the Wild Onion providing security at the front door. In addition to six months' experience in that position at the Wild Onion and another twelve months in other security positions at the Wild Onion, Mr. Clark had experience working as a bartender for about two years in San Diego. He participated in alcohol awareness training when he worked as a bartender in California. Mr. Clark's duties include making certain that everyone who enters the bar is at least 21 years old; and excluding obviously intoxicated people from the bar.²⁴

24. Mr. Clark determines whether people are obviously intoxicated by engaging them in conversation and closely observing them, including looking them in the eyes.²⁵

25. On the night of May 6 or the early morning of May 7, Mr. Clark turned away two groups of people. The first group was a group of women who arrived in a limousine with drinks in hand. After engaging the women in conversation, Mr. Clark determined that they were too intoxicated to enter, so he asked them to leave, which they did.²⁶

26. It is very unusual for Mr. Clark's assistance to be required to help an individual leave the Wild Onion. There was no one on the night of May 6 – May 7, 2008 who needed Mr. Clark's assistance to leave the bar.²⁷

²¹ Anderson test.

²² *Id.*

²³ Anderson test.

²⁴ Respondent's Exhibit 3 (Resp. Ex. 3), transcript of testimony of Ryan Clark at pages 5-7 and 20.

²⁵ Resp. Ex. 3 at page 7.

²⁶ Resp. Ex. 3 at pages 8-9.

²⁷ *Id.* at page 10.

27. Christine Rozek, the Deputy Director of the Department of Safety and Inspections for the City of St. Paul, routinely reviews police reports for licensing implications. Ms. Rozek reviewed the report submitted by Officer Lee concerning his encounter with Mr. Anderson outside the Wild Onion in the early morning of May 7, 2008.²⁸

28. After reviewing the police report and consulting with the City Attorney, Ms. Rozek recommended a fine of \$500. This fine is based on section 409.26 (b)(4) of the St. Paul Legislative Code.²⁹

29. On May 13, 2008, the City of St. Paul sent a Notice of Violation to Respondent, alleging the violation of section 409.26(b)(4) and imposing a penalty of \$500.³⁰

30. On May 16, 2008, Respondent requested a hearing in connection with the alleged violation.³¹

Failure to Prevent Disturbance

31. At approximately 1:50 a.m. in the early morning of June 11, 2008, St. Paul police officer Laura Bolduan and her trainee partner, Tim Logan, were summoned following a report of loud voices and music coming from the Wild Onion. The disturbance had been called in to the police at 1:32 a.m.³²

32. Officers Bolduan and Logan arrived at the Wild Onion at 1:53 a.m. On their arrival, they pulled into the Wild Onion parking lot where they were met by security staff for the bar. Security staff informed Officers Bolduan and Logan that the disturbance was a result of a man and woman who had been yelling at one another in one car, along with a person in a second car playing music very loudly. Security staff had succeeded in getting both the arguing couple and the person playing the loud music to leave before the police arrived.³³

33. Seeing no active disturbances, Officers Bolduan and Logan proceeded in their car to the back of the parking lot, turned the car around and exited the lot onto Grand Avenue. The officers sat in their car and observed the bar and parking lot from Grand Avenue for approximately 5-7 minutes before driving away and pulling around to the alley behind the Wild Onion.³⁴

34. The Wild Onion parking lot extends in a narrow section from the front of the building all the way to the back of the building. This narrow leg is approximately one-half the length of a city block, about 150 feet long. The parking lot then turns 90

²⁸ Rozek test.

²⁹ Rozek test.

³⁰ Ex. 4-1 and 4-2.

³¹ Ex. 5.

³² Testimony of Officer Laura Bolduan (Bolduan test.) and Resp. Ex. 2.

³³ Bolduan test.; Testimony of Dan Martin (Martin test.); Ex. 6-2.

³⁴ Bolduan test.

degrees and continues behind the building. This back section of the parking lot is approximately 120 feet wide. On June 11, 2008, a low wrought iron fence separated the back section of the parking lot from the alley.³⁵

35. Standing in the alley and looking into the parking lot, Officer Bolduan had a good view of the back of the parking lot and of most of the narrow leg leading to the front driveway, although she could not see all the way to the front of the parking lot.³⁶

36. From about 2:00 a.m. until about 2:12 a.m., Officer Bolduan observed patrons leaving the Wild Onion, congregating in the parking lot, some of them talking loudly, some breaking bottles. Officer Bolduan did not see anyone from the Wild Onion trying to quiet the patrons in the parking lot. She did not observe any Wild Onion staff people in the parking lot at all. The noise level reached a point where Officer Bolduan determined that it would disturb neighbors trying to sleep. After observing for about five minutes, Officer Bolduan instructed the noisy patrons it was time to turn down the music and leave. Her efforts were successful and the parking lot was cleared without further incident.³⁷

37. Officer Bolduan felt that she was able to handle the disturbance in the parking lot from her vantage point in the alley. She did not believe that the level of disturbance required her to return to the parking lot itself.³⁸

38. Once the parking lot cleared, Officers Bolduan and Logan left. They cleared the call at 2:14 a.m. Typically, Officer Bolduan clears a call about two minutes after she leaves the scene to which she was summoned. Based on her usual practice, Officer Bolduan estimated that she probably left the alley behind the Wild Onion at about 2:12 a.m.³⁹

39. Officers Bolduan and Logan did not return to the Wild Onion after they left the alley.⁴⁰

40. After returning to the Western District police station, Officers Bolduan and Logan wrote a police report about the events they had witnessed at the Wild Onion.⁴¹

41. The Wild Onion has a set procedure in place for handling closing time. At about 1:45 a.m., the DJ announces "last call." The songs played after that point are slower and quieter than the music more generally played at the bar in the evenings. With each of the next two songs, people are reminded of "last call" for drinks. At the time of third song, the DJ announces "last song." At 2:00 a.m., the lights are turned up and staff request that all drinks be finished. The DJ reminds patrons to be respectful of neighbors; and that cabs are available outside the bar. The security guard at the front

³⁵ Bolduan test.

³⁶ Bolduan test.

³⁷ Bolduan test.

³⁸ Bolduan test.

³⁹ Bolduan test.; Resp. Ex. 2.

⁴⁰ Bolduan test.

⁴¹ Ex. 6-1 through 6-3.

door goes outside and remains outside the front door. As people leave he tells them to move to their cars. He walks past the patio and to the parking lot driveway. At approximately the same time, the security person at the back door locks the door so that people cannot re-enter the bar that way. He then stays near the back door, helping patrons out, directing them to use the front door.⁴²

42. Once the patrons are all ushered out the front door and the bar is empty, the remaining staff all leave the bar and go outside to assist in dispersing people from the area around the bar. Once the area of the bar is clear, the staff walk in groups around the block, picking up garbage and encouraging any loiterers to move along.⁴³

43. Ms. Rozek reviewed the report submitted by Officers Bolduan and Logan concerning the early morning of June 11, 2008, events at the Wild Onion.⁴⁴

44. Ms. Rozek was familiar with neighborhood concerns about noise caused by Wild Onion patrons around closing time. She met with neighbors and community organizations on several occasions, took a number of complaints over the years, and participated in multiple meetings with Wild Onion management to discuss these concerns.⁴⁵

45. Wild Onion management has been receptive to Ms. Rozek's requests to meet, and had taken steps to reduce the noise problem, including increasing security, and developing an elaborate procedure for closing that involved staff in supervising departing patrons when necessary.⁴⁶

46. Nonetheless, noise and inappropriate behavior problems at closing time continued to disturb neighbors who have brought their concerns to the St. Paul police as recently as June 2008.⁴⁷

47. After reviewing the police report and consulting with the City Attorney, Ms. Rozek recommended a fine of \$1,000. This fine is based on the alleged violation of the conditional license being a second violation pursuant to the penalty matrix contained in St. Paul Legislative Code Section 310.05(m)(1).⁴⁸

48. On June 18, 2008, the City of St. Paul sent Respondent a letter informing Respondent of the alleged June 11 violation of its license condition and of the proposed fine.⁴⁹

⁴² Martin test.

⁴³ Martin test.

⁴⁴ Rozek test.

⁴⁵ Rozek test.

⁴⁶ Rozek test.

⁴⁷ Rozek test.; testimony of Thomas Richardson.

⁴⁸ Rozek test.

⁴⁹ Ex. 7-1 through 7-3.

49. On June 26, 2008, Respondent, through its attorney, requested a hearing on the alleged June 11 violation and requested that the hearings on the May 7 and June 11 violations be consolidated.⁵⁰

50. In an Amended Notice of Violation and Notice of Administrative Hearing dated June 26, 2008, the City notified Respondent of the consolidated hearing to address both alleged violations.⁵¹

51. In an Amended Notice of Violation and Notice of Rescheduled Administrative Hearing dated July 14, 2008, the City notified Respondent of the rescheduled consolidated hearing to be held on August 11, 2008.⁵²

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. This matter is properly before the City and the ALJ pursuant to St. Paul Legislative Code §§ 310.05, 310.06 and 324.11.

2. The City complied with all requirements of regulation and gave proper and timely notice to the Licensee.

3. Minn. Stat. § 340A.502 prohibits any person from selling, giving, furnishing or in any way procuring “for another alcoholic beverages for the use of an obviously intoxicated person.”

4. Pursuant to section 409.26(b)(4) of the St. Paul Legislative Code it is a violation of a liquor license to sell alcoholic beverages to an intoxicated person.

5. Pursuant to section 310.05(m)(1) of the St. Paul Legislative Code, the City will impose a \$500.00 for the first violation of a condition placed on a license and \$1,000.00 for the second violation of a condition placed on a license.

6. The City has not proven by a preponderance of the evidence that the Licensee or any employee of the Licensee sold, gave, furnished or in any way procured one or more alcoholic beverages on the night of May 6-7, 2008 in violation of Minn. Stat. section 340A.502 and St. Paul Legislative Code section 409.26(b)(4).

7. The City has proven by a preponderance of the evidence that the Licensee failed to comply with Condition #1 of its liquor license requiring it to “provide security in the parking lots . . . at bar closing to ensure that the patrons leave the premises and the parking lots without causing a disturbance in the surrounding neighborhoods.”

⁵⁰ Ex, 8.

⁵¹ Ex. 9-1 through 9-3.

⁵² Ex. 10-1 through 10-4.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge respectfully recommends that: the St. Paul City Council:

- 1) DISMISS the allegation that the Licensee sold alcohol to an obviously intoxicated person; and
- 2) AFFIRM the fine and/or other adverse action against the license based on the Licensee's failure to comply with Condition #1 of its liquor license.

Dated: September 4, 2008

s/Raymond R. Krause
RAYMOND R. KRAUSE
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after reviewing the record and may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to Section 310.05 of the St. Paul Legislative Code, the City Council's final decision shall not be made until this Report has been made available to the parties to the proceeding and the Licensee has been provided an opportunity to present oral or written arguments alleging error on the part of the Administrative Law Judge in the application of the law or the interpretation of the facts and an opportunity to present argument relating to any recommended adverse action. The Licensee and any interested parties should contact Shari Moore, Saint Paul City Clerk, 290 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102, to ascertain the procedure for presenting argument.

MEMORANDUM

Serving An Obviously Intoxicated Person

While the City proved by a preponderance of the evidence that Mr. Anderson was intoxicated, and possibly even obviously intoxicated, by the time Officer Lee

observed him that is not the focus of the inquiry in this matter. The question is – was Mr. Anderson obviously intoxicated before he was served any or all of his drinks in the Wild Onion? The City offered no evidence at all about Mr. Anderson’s condition before he was served. The Licensee, on the other hand, offered testimony that its staff did not perceive that Mr. Anderson was obviously intoxicated and that Mr. Anderson himself did not believe he was obviously intoxicated while he was in the bar. Ryan Clark, the front door security person, testified that he remembers turning away obviously intoxicated people that night but that he does not recall Mr. Anderson. Mr. Anderson testified that he was able to move between his table and the bar comfortably, with no stumbling or missteps; and that, until his very last drink, he felt fine. Furthermore, Mr. Anderson testified that, after his first drink at the Wild Onion, he did not order another drink but that friends were bringing drinks to him in celebration of his birthday.

The City relies entirely on Officer Lee’s impressions, which were formed after Mr. Anderson had the drink that finally made him feel unwell. Even those impressions were vague. Officer Lee did not recall whether Mr. Anderson had gotten into a car or not when Officer Lee asked to speak with him. Officer Lee also did not perform any tests of Mr. Anderson’s physical abilities. He simply administered a breathalyzer test, which indisputably showed that Mr. Anderson was intoxicated.

The Minnesota Supreme Court has drawn a clear line between what is required to show that someone is intoxicated and what is required to show that someone is obviously intoxicated. The Court stated that “[h]olding . . . that a given blood-alcohol content may establish as a matter of law that a person is obviously intoxicated would render meaningless the word ‘obviously’ . . . and would significantly increase the duty imposed on those furnishing intoxicating liquor.”⁵³ In this case, the City’s offer of only the breathalyzer results after-the-fact and its failure to offer any evidence that Licensee served Mr. Anderson at a time when he was obviously intoxicated, falls far short of the proof required to show a license violation.

Violation of License Condition

The Licensee offered abundant testimony about its practices and procedures for security before, during and after closing time at the Wild Onion. While it is heartening to learn that the Wild Onion is attempting to keep control of the noise levels around closing time, the critical question in this proceeding is whether there was a disturbance in the Wild Onion parking lot between 2:00 and 2:12 a.m. in the morning of June 11 and, if so, whether the Wild Onion staff managed that disturbance.

Officer Bolduan testified credibly that she was concerned about the noise levels in the alley as she stood listening between 2:00 a.m. and 2:12 a.m. on June 11, and that no one from the Wild Onion took steps to quell the noise. While the Licensee offered similarly credible testimony that there was staff in front of the bar at that point in time, there was no first-hand testimony about someone in the rear of the bar where most of the cars are during that time. Mr. Martin and Mr. Clark testified that the person at the

⁵³ *Seeley v. Sobczak*, 281 N.W.2d 368, 371 (Minn. 1979).

back door hovers both inside the bar and out after the lights are turned on at 2:00 a.m. The person who was present in the back of the bar that night did not testify.

Furthermore, even if the bar staff followed their routine perfectly that night and fanned out into the front and back of the bar once all of the patrons were gone from inside the bar, the undisputed testimony offered by the Licensee was that sometimes the final push to get people outside does not end until 2:30 a.m. It is entirely possible that the back door person was inside the bar at 2:00 a.m. on June 11 and that the rest of the staff, except for Ryan Clark, were inside the back until as late as 2:30, working on getting patrons moved out of the bar. Ryan Clark stayed primarily in front of the bar, focusing on patrons exiting through the front door, and might well have missed any commotion in the rear of the parking lot.

It is also quite possible that security staff were in the back lot at the time Officer Bolduan witnessed the disturbance as Respondent avers. Officer Bolduan admittedly does not recognize every Wild Onion employee by sight. However, even if true, having security in the lot at closing is only part of Condition #1. If there were any security personnel in the lot, they did not make their presence known and did not prevent or quell the disturbance. The point of the license condition is not just to have security in the lot for its own sake, but to prevent or quickly end disturbance of the neighborhood. This was not done, at least until Officer Bolduan acted.

Officer Bolduan's testimony is not inconsistent with the testimony offered by the Licensee. There is nothing to dispute her testimony. Therefore, the City met its burden, showing by a preponderance of the evidence, that a disturbance occurred in the rear of the Wild Onion sometime between 2:00 a.m. and 2:14 a.m. in the morning of June 11, 2008, and that the Licensee failed to provide its own staff to quiet the disturbance, leaving the St. Paul police to handle the situation. This is a violation of Condition #1 of Licensee's liquor license.

Respondent make two further arguments. First, is that there is no statutory definition of disturbance. Therefore, it is argued that whatever happened between 1:53 and 2:12 a.m. that day might not have been a disturbance at all. *Merriam Webster New Collegiate Dictionary* defines "disturb" as "to destroy the tranquility of." Clearly, Officer Bolduan who is an experienced police officer felt that whatever commotion was happening was enough to destroy the tranquility of the early morning hours of June 11.

The second argument put forward is that Respondent's definition of "closing time" is the precise time at which all patrons have left the bar and the doors are locked. Apparently, from the testimony, this point is usually reached sometime after 2:15 a.m. Since Officer Bolduan had left by 2:12 a.m., she could not have known whether there were any security in the lot or a disturbance at "closing time."

The ALJ does not accept this narrow definition of "closing time." For purposes of the license condition, closing time is a process rather than a precise moment in time.

Security are required to be actively preventing disturbances from the time they begin the closing process until all the patrons are dispersed.

Conclusion

Because the City failed to prove by a preponderance of the evidence that the Licensee or its employees served Mr. Anderson at a time when he was obviously intoxicated on the night of May 5-6, 2008, the Administrative Law Judge recommends that the City dismiss this alleged violation.

Because the City did show by a preponderance of the evidence that the Licensee failed to monitor its parking lot and provide adequate coverage to quell a disturbance at 2:00 a.m. on the morning of June 11, 2008, the Administrative Law Judge recommends that the City affirm this violation and impose a fine or other appropriate adverse action.

R. R. K.